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**IN THE  
COURT OF APPEALS OF INDIANA**

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KEVIN STRICKLER,

Appellant-Plaintiff,

vs.

DALTON FOUNDRY,

Appellee-Defendant.

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No. 93A02-0612-EX-1078

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APPEAL FROM THE INDIANA WORKER'S COMPENSATION BOARD  
Application Nos. C-171189 and C-177371

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**July 25, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Kevin Strickler appeals the decision of the Indiana Worker's Compensation Board ("the Board") that he failed to establish that he sustained low back injuries arising out of and in the course of his employment. We affirm.

## **Issue**

We restate the issue as whether the Board erred in determining that Strickler's injuries did not arise out of and in the course of employment.

## **Facts and Procedural History**

The facts most favorable to the Board's decision indicate that Strickler was employed by Dalton Foundry as a third-shift casting inspector. On May 20, 2003, Strickler suffered an accidental injury to his left knee arising out of and in the course of his employment when he was pinned by a forklift. Strickler received treatment for this injury and returned to his job the same night. Dalton provided medical treatment for the left knee injury at Med State with Dr. Douglas Greeson on May 21, May 24, August 25, and September 3, 2003. Dalton also provided physical therapy on September 5, 2003. Dalton had notice of the injury to Strickler's knee and accepted the injury as compensable under the Worker's Compensation Act.<sup>1</sup> At that time, Strickler did not report to Dalton that he hurt his lower back on May 20, 2003.

The first time low back pain complaints appeared in Strickler's medical records following his injury was on August 25, 2003, when Strickler reported back pain to Dr. Greeson. In August, Strickler did not relate the back pain to the May 20, 2003, incident, but

on September 5, 2003, while at physical therapy, Strickler did relate his back pain to the May injury. Strickler was treated by his family physician, Dr. Thomas Ringenberg, on several dates between June 9, 2003, and May 4, 2004, with no mention of low back pain. Dr. Ringenberg referred Strickler for an MRI of his low back on July 15, 2004, one month prior to his second alleged low back injury. Strickler alleged that he injured his lower back on August 12, 2004, when he squatted to pick up a band on the floor of the foundry that weighed less than one pound. After the August incident, Dr. Greeson treated Strickler. Strickler was then seen at Fort Wayne Physical Medicine on September 13, 2004, where he reported that his low back pain started gradually and became worse on August 12, 2004.

Strickler was seen by Dr. Isa Canavati at Fort Wayne Neurological Center, and Strickler filled out a health and history data form on October 26, 2004. On that form, Strickler stated that his low back pain began on August 12, 2004. Dr. Canavati wrote a letter to Strickler's attorney, stating that the work injury in August caused Strickler's low back problems. About one year later, Dr. Canavati wrote a second letter, stating that the May 2003 injury actually caused Strickler's low back problems. Dr. Canavati diagnosed Strickler with degenerative disc disease and congenital stenosis. Dr. Canavati performed back surgery on Strickler at Lutheran Hospital on October 27, 2005. Following back surgery, Dr. Canavati wrote a letter to Strickler's attorney that contained Strickler's medical history, including the onset of low back pain after the May 2003 forklift injury.

Strickler filed his first application for adjustment of claim on August 30, 2004, alleging that he had sustained a compensable lower back injury on May 20, 2003. On

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<sup>1</sup> Strickler's knee injury is not at issue in this appeal.

September 28, 2005, Strickler filed a second application alleging that he sustained a second work-related back injury on August 12, 2004. Dalton denied that Strickler sustained a work-related low back injury on either date.

Single Hearing Member Daniel G. Foote heard these applications on April 26, 2006. Foote concluded that the evidence did not establish that Strickler sustained a low back injury on May 20, 2003, and that the second alleged injury was a result of a pre-existing back condition, which was not aggravated by his work on August 12, 2004. Foote found that Strickler should take nothing by way of his applications for adjustment of claim.

Strickler appealed Foote's decision to the Board on May 26, 2006. On October 25, 2006, the Board affirmed Foote's decision. The Board found that Strickler "did not have a good recollection of the events or symptoms relevant to his claims." Appellant's App. at 8. The Board made the following conclusions:

1. In order to establish that an injury involving an internal medical condition such as a lumbar disk herniation or injury, expert evidence linking the medical condition to a work-related risk is required. [Strickler's] testimony alone is insufficient to establish medical causation.
2. In cases involving ongoing or pre-existing conditions, the fact that the employee experiences the onset of pain while working may not lead to the conclusion that the injury arose out of, or was caused by, the employee's work activities. Rather, the employee has the burden of establishing by competent evidence that there was some work-related stress or strain as the medical cause of any injury or aggravation.
3. The evidence does not establish that [Strickler] sustained a low back injury by accident arising out of and in the course of his employment on May 20, 2003. There is no documentation that [Strickler] suffered any low back symptoms at all until several weeks after the work incident and knee injury of May 20, 2003. [Strickler] himself confirms that he did not suffer from low back pain in the immediate aftermath of the incident on May 20, 2003.

4. The medical evidence establishes that [Strickler] experienced the gradual onset of low back pain at some point between August of 2003 and July of 2004. Indeed, [Strickler] saw Dr. Ringenberg for low back pain in July 2004, less than one month before the alleged incident of August 12, 2004. Dr. Ringenberg ordered an MRI as of July 15, 2004. The order for the low back MRI was outstanding as of the date of [Strickler's] second alleged injury.

5. [Strickler] testified that he was stooping at work on August 12, 2004 when he felt the onset of low back symptoms, but acknowledged that there was no additional load placed on his back at the moment he felt the onset of pain. Even if [Strickler's] description of the alleged incident of August 12, 2004 is taken as established fact, it is undisputed that [Strickler] was suffering from pre-existing low back pain at the time of the second incident. [Strickler] at most experienced the manifestation of a documented pre-existing back condition while he was in the course of his employment. The pre-existing condition is not related to the work incident and knee injury of May 20, 2003.

6. [Strickler] shall take nothing by way of his Applications for Adjustment Claim.

Appellant's App. at 9. Strickler now appeals.

### **Discussion and Decision**

Indiana Code Section 22-3-2-2 provides that every employer shall pay and every employee shall accept compensation for personal injury by accident arising out of and in the course of the employment. The burden of proof is on the employee. *Id.* An injury is accidental "when it is the unexpected consequence of the usual exertion or exposure of the particular employee's job." *Indiana Michigan Power Co. v. Roush*, 706 N.E.2d 1110, 1113 (Ind. Ct. App. 1999). An injury "arises out of employment" if there is a causal link to an injury sustained on the job. *Bertoch v. NBD Corp.*, 813 N.E.2d 1159, 1162 (Ind. 2004). "Even if a preexisting condition contributed to the injury, the employee is entitled to recover for the full extent of the injury, including an aggravation or triggering of a pre-existing injury, causally connected with the employment." *Id.*

Strickler alleged that he suffered from two accidental back injuries caused by his duties as a Dalton employee. When reviewing the Board's determination, this Court will neither weigh evidence nor assess the credibility of witnesses and will consider only the evidence most favorable to the award, together with all reasonable inferences. *Graycor Indus. v. Metz*, 806 N.E.2d 791, 798 (Ind. Ct. App. 2004). We are bound by the Board's findings of fact and may consider only errors in the Board's conclusions of law. *Id.* at 797. We use a two-tiered standard in reviewing decisions of the Board: "1) we examine the evidence in the record for competent evidence of probative value to support the Board's findings, and 2) we examine the findings to determine their sufficiency to support the decision." *Id.* "The findings must be stated with sufficient specificity, with regard to contested issues, so as to allow intelligent review." *Id.* "Only when there is substantial, undisputed evidence that leads to a result contrary to the one reached by the Board will the Board's negative award be overturned." *Bowling v. Fountain County Hwy. Dep't*, 428 N.E.2d 80, 84 (Ind. Ct. App. 1981). The Board's decision can only be reversed if reasonable persons would have been bound to reach a conclusion contrary to the Board's decision. *Gentry v. Jordan*, 166 Ind. App. 695, 699, 337 N.E.2d 530, 532 (1975).

Strickler contends he presented enough evidence to show that he sustained a compensable work-related injury. "The question of a causal relationship between an accident and a resulting permanent medical condition is ordinarily a complicated medical question outside the understanding of laypersons, and expert testimony on the issue is required." *Outlaw v. Erbrich Prod. Co.*, 777 N.E.2d 14, 28 (Ind. Ct. App. 2002). However, an expert's opinion may be so lacking in probative value as to be insufficient to prove the existence of a

causal relationship. *Id.* at 29. Strickler asserts that the Board should have accepted Dr. Canavati's testimony and records regarding his health history. The Board is not bound to accept the expert opinion in light of other evidence and inferences before it. *Combs v. Nat'l Veneer & Lumber Co.*, 160 Ind. App. 501, 503, 313 N.E.2d 76, 77 (1974). An expert opinion regarding causation that lacks reasonable certainty or probability is insufficient by itself to support a judgment, or to establish causation when the opinion is only based upon a temporal relationship between an event and a subsequent medical condition. *Outlaw*, 777 N.E.2d at 29.

Dr. Canavati wrote letters with conflicting information regarding Strickler's health and injuries. Dr. Canavati's first letter to Strickler's attorney dated February 17, 2005, stated that Strickler sustained the alleged traumatic work-related injury that aggravated a preexisting condition on August 12, 2004. Appellant's App. at 32. In a second letter to Strickler's attorney dated February 12, 2006, Dr. Canavati changed his opinion, and stated that the May 2003 incident was the cause of Strickler's back injury. *Id.* at 34. The record indicates that Strickler returned to his regular duties at work following the May 20, 2003 incident and showed no signs of disability. "Ultimately, the Board is free to accept or reject expert testimony." *Outlaw*, 777 N.E.2d at 29. Here, the Board was free to reject Dr. Canavati's conflicting testimony regarding causation.

Strickler's testimony was also inconsistent as to when his alleged injuries occurred and the pain he suffered from the injuries. Strickler failed to meet his burden of proving that he sustained compensable personal injuries by accident that arose out of and in the course of his employment. Therefore, we affirm the Board's negative award.

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.